



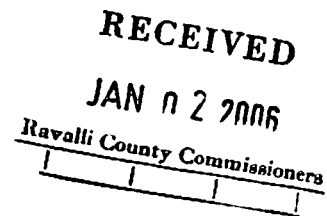
RAVALLI COUNTY ATTORNEY

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MEMO

TO: Ravalli County Commissioners
FROM: George H. Corn *GHC*
DATE: December 29, 2006



RE: Ravalli County Animal Protection Services Ordinance/John Bell's Memo

Commissioners,

John Bell has reviewed the ordinance. He has attached specific suggestions that need to be addressed. As he notes, the ordinance is a great idea and his critique is merely to tighten it up to make it useful. I have reviewed his suggestions and I agree with them.

Would you please review this with the group that is assisting you in drafting the ordinance and ask them to incorporate John's suggestions. I would advise you to get it to them right away, that way the changes could be made before your meeting with them January 11, 2007. Please call if you have questions and if they are specific, particularly if they come from the group, please have them put in writing so they address them promptly.

I doubt there will be a need for this since John's memo is very specific.

In closing, I would appreciate the opportunity for John to review the changes to make sure the document is workable. Thank you.

GHC/jw
Enclosure



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TO: George
FROM: John
DATE: December 28, 2006

RE: *Ravalli County Animal Protection Services Ordinance*

Dear George:

I reviewed the Animal Protection Services Ordinance last Friday. I had not heard that there was an ordinance being drafted until Tuesday, December 19th. James did brief me on some things he had done that might affect prosecution prior to his taking a new job in Missoula. For some reason, this ordinance was never mentioned. Please feel free to give a copy of this memo in addition to any comments you send to the Commissioners (prior to their January 11th meeting).

First, I think it's a great idea that this ordinance was drafted because it can solve many potential problems and organize the main issues in this area into one document. However, I do have some suggestions. I see two major errors in the ordinance that would not allow it to pass constitutional muster, at least in my opinion. These errors could also cause numerous problems with our State government concerning fines generated for infractions.

I like how the committee has defined terms very specifically. In addition, god knows we needed a licensing procedure and fee schedule as provided for. Section 5.2 that deals with a conclusive presumption of abandonment is definitely needed from what I have experienced with the prosecution of animal cruelty cases. I also like the provision regarding training for the animal control officer, although I don't think forty hours will be near enough.

Where I see major problems are with section 7 (inhumane treatment of animals/cruelty) and sections 8.2 and 8.3. First, as you know, we cannot implement an ordinance or a section of an ordinance that conflicts with state law. This may be okay if the ordinance states clearly that a provision is a recitation of M.C.A. 45-8-211 and 81-7-401, 402. However, this draft appears to incorporate these statutes within the ordinance. I believe

this is a big mistake. Also, any fines paid to the Court regarding infractions of state statutes are clearly subject to state authority. Section 11.3 which mandates that the funds derived from the enforcement of the ordinance are to be paid to the Ravalli County Treasure would not be legal for offenses under 45-8-211 and 81-7-401, 402. I know you are more of an expert than me about constitutionality and legislation; but I believe this is as a major error. In addition, I cannot imagine that James approved this incorporation. If the committee chooses to just recite this as the applicable state law, and in some manner makes it clear that the ordinance is not trying to implement, conflict or incorporate that law, the language in those sections still needs to be verbatim with the applicable Montana code.

There are three other miscellaneous issues I wanted to address regarding this Ordinance. First, I believe Ravalli County Ordinance #14 would need to be dissolved with the passing of this Ordinance so there would be no conflict of laws regarding enforcement. Second, I would hope our office would have some input in the training of an animal control officer. Many times we have problems with new law enforcement officers regarding citations. Sometimes they don't understand the necessary probable cause to issue a citation as opposed to just a neighbor or some person making a complaint. In addition, we can't prosecute a citation on probable cause alone since the burden to prove a citation is beyond a reasonable doubt which requires substantially more proof than probable cause. Therefore, an animal control officer would need to be trained in and take the time to obtain statements and other evidence that allow us to prove the charge. It does no good to cite numerous people if we have to dismiss the citation because there is not enough evidence to prove the matter beyond a reasonable doubt. This burden of proof doesn't just relate to the more significant vicious dog citations; but is also the burden of proof under Montana Law to prove any citation, including potential ones for failure to license an animal. I also see that the Ordinance (3.1.1) discusses civil citations. I am thinking this might be a mistake; but if not, what do they mean by a civil citation? Last, as usual, we have one more law that our office needs to prosecute, yet there is no allowance for funding to aid that prosecution. At this point, every prosecutor in this office is already stretched to working more than a normal work week.

I also worry that the vicious dog provision is not as good as the one previously contained under Ordinance #14. The Ordinance lists an exception to an animal being vicious if it bites, attacks or menaces a trespasser on the property of the owner. I have seen numerous case where someone was on the owner's property in a legal fashion, such as going to their door to sell something or walking through their unfenced yard to obtain a toy or take a shortcut. Legally, these people would not be considered trespassers. Someone could argue that the new Ordinance covers this because if they are attacked, bitten or menaced, the dog would be vicious in my opinion. However, what people don't realize is that attorneys are the ones burdened with ambiguous word usage when trying to enforce an

ordinance. Any Defendant could argue that one was trespassing on somebody's yard when you don't have permission, although Montana law clearly allows an invitee such as the ones I have described to enter someone else's property. This might be different if the property is gated or fenced or if there are warning signs. Personally, I do not believe that 2.21 A. 2 should be in the Ordinance. Someone could still use trespass as a defense no matter what's in the Ordinance if you had the type of trespass where someone is attempting to burglarize property or is clearly trespassing based on what I mentioned above. However, this particular usage, in my opinion, allows many dogs to hurt people who are unaware of the vicious propensity of the dog, and who are legal invitees on the property even though they have not been granted specific permission to be on the property.

A handwritten signature in black ink, consisting of a stylized 'J' or 'G' followed by a horizontal line.